

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10127 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

VALUBHAI MERAMBHAI BHARVAD

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner No. 1
MR RM CHAUHAN, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 03/09/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 02.4.2003 passed by the Police Commissioner, City of Rajkot, against him, in exercise of powers under Section 3(1) of

the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "bootlegger" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 02.4.2003.

2. The grounds served upon the petitioner reveal that in passing of the impugned order, the detaining authority took into consideration two aspects of the matter, firstly, two crimes registered against the petitioner on 12.3.2003 and 16.3.2003 under Sections 66(1)(b), 65(a)& (e), 116(b) and 81 of the Bombay Prohibition Act, and the second, which the detaining authority took into consideration is in respect of in-camera statements of witnesses recorded by the proposing authority on 26.3.2003 and verified by the detaining authority on 31.3.2003. The witnesses reveal to the incident took place on 17.11.2002 and 16.3.2003. In an incident revealed by the witness, occurred on 17.11.2002, it was informed by the witness that the petitioner was a headstrong person and bootlegger. The petitioner makes huge earning from transport of foreign liquor. On the day of the incident, the witness came to know that the quarrel took place near his house and when witness went there and found that one Haribhai accomplice of the petitioner and petitioner both with sticks in hand were there and were uttering abuses. When witness attempted to persuade the petitioner, the petitioner and his accomplice ran towards the witness with the sticks. The area was deserted soon because the persons present left the place on account of fear of the petitioner. While the incident which occurred on 16.3.2003, the witness informed that the petitioner and his accomplice Haribhai were concealing of bulk liquor behind the business place of the witness. When witness resisted this activity, the witness was beaten by the petitioner and his accomplice Haribhai. The petitioner took out a knife and threatened the witness that if witness attempts to inform the police, he would be killed by him. A crowd was gathered but due to fear of the petitioner, the same was dispersed. Both the above witnesses requested the proposing authority to conceal their identity. From the above material, the detaining authority came to the conclusion that the petitioner was "bootlegger" within the meaning of the PASA Act and his activities to be prejudicial to the maintenance of public order and hence the detaining authority passed the order impugned in this petition.

3. Learned Advocate Mrs. Subhadra G. Patel for the petitioner and learned AGP Mr. R.M. Chauhan were heard at length.

4. Amongst various contentions raised on behalf of the petitioner and controverted by the AGP, from rival contentions, it appears that the matter can be dealt with and disposed of on the ground that in passing of the order whether the detaining authority applied its mind properly. In the grounds served upon the petitioner, it is observed by the detaining authority that out of two crimes under the Bombay Prohibition Act registered against the petitioner, in one of the crime the petitioner was released on bail by the competent court, while in another case, the bail application of the petitioner was rejected by the court. From this material, the detaining authority reached to the subjective satisfaction that in the case wherein the bail application came to be rejected by the court, the petitioner was likely to file bail application again, and was likely to be released on bail and on so releasing the petitioner the petitioner was likely to continue his illegal activities. According to the learned Advocate for the petitioner, the detaining authority did not apply its mind to the material on record that the petitioner was under judicial custody and was not likely to be released on bail, though this contention is controverted by learned AGP. Having regard to this rival contentions and having gone through the record available to the court carefully, it transpires that the facts of this are squarely covered by a decision of the Apex Court in the matter Court in the matter of AMRUTLAL vs. UNION OF INDIA, reported in AIR 2000 SC 3675 though the detaining authority has taken into consideration the material on record that the bail application was filed by the petitioner and was rejected by the Court, but to come to the conclusion that the petitioner was likely to be released on bail, there was no material before the detaining authority. The reasonable inference in the facts and circumstances of the case cannot be drawn from the fact that since in one case the petitioner was released on bail and since in another case the bail application was rejected, the petitioner was likely to be released on bail on filing application again. The learned Advocate for the petitioner makes a statement that in another case in which the petitioner is under judicial custody and his bail application was rejected has not carried further nor any fresh bail application is preferred by the petitioner. Therefore, there is non-application of mind of the detaining authority in vital important aspect of the matter vitiating the order

impugned in this Special Civil Application. The order impugned on this ground alone is required to be quashed and set aside.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Rajkot City, on 02.4.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair